

ENTERED

September 09, 2020

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION**

RAUL GONZALEZ,

Plaintiff,

VS.

BRYAN GORDY, *et al*,

Defendants.

§
§
§
§
§
§
§
§

CIVIL NO. 2:18-CV-220

ORDER

The Court is in receipt of the Magistrate Judge's Memorandum and Recommendation ("M&R"), to Grant Defendant Resendez's Motion to Dismiss and to Retain Plaintiff's Excessive Force Claim. Dkt. No. 91. No objections have been filed to the M&R. *See id.* at 14 (setting 14-day deadline to file objections).

Defendant Josie Resendez ("Resendez") moved to dismiss Plaintiff Raul Gonzalez's ("Gonzalez") deliberate indifference claim against her for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). Dkt. No. 77.

Gonzalez alleges that he was beaten by prison staff and denied medical care; eventually diagnosed with a fever and placed in quarantine without medical care; diagnosed with a 104.7 degree fever and taken to the hospital where he went into cardiac arrest, was paralyzed from the waist down, and had to be put on a respirator. Dkt. No. 1. Gonzalez alleges Resendez was deliberately indifferent to his serious sickness, denied him access to medical care, and ordered he be forcibly removed from the medical center. *Id.*

In her M&R, the Magistrate Judge recommends granting Resendez's motion to dismiss because Gonzalez does not allege that Resendez knew of Gonzalez's serious illness or that her actions disregarded an excessive medical risk to him, as would be required for a deliberate indifference claim. Dkt. No. 91. The Magistrate Judge recommends retaining Gonzalez's excessive force claim against Resendez

because he alleged Resendez directed a malicious amount of force against Gonzalez and he suffered more than a de minimis injury from the force. *Id.*

After review of the filings, record and relevant law, the Court **ADOPTS** the Memorandum and Recommendation, Dkt. No. 91, in its entirety. Accordingly, the Court **GRANTS** Resendez's motion to dismiss, Dkt. No. 77, and **DISMISSES** Gonzalez's deliberate indifference claim against Resendez for failure to state a claim. The Court **RETAINS** Gonzalez's excessive force claim against Resendez.

SIGNED this 8th day of September, 2020.

A handwritten signature in black ink, appearing to read 'Hilda Tagle', is written over a horizontal line.

Hilda Tagle
Senior United States District Judge